

U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES DISTRICT COURT OF MASSACHUSETTS

2006 JUL 10 P 2:21

FLAVIA BENITEZ
PLAINTIFF

PRO-SE
FILE # 04-CV-11959-NG

RECEIVED
U.S. DISTRICT COURT
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VS

SODEXHO-MARRIOTT
DEFENDANTS

COOLEY MANION JONES

PLAINTIFF REBUTTAL AND OPPOSITION TO THE DEFENDANTS GENERAL STATEMENTS.

1-THE DEFENDANTS (SODEXHO-MARRIOTT) ARE NOT MISNAMED . THERE WERE TWO DIFFERENT COMPANIES AND THEY MERGED AS ONE NAMED AS SODEXHO-MARRIOTT.

2- THE DEFENDANTS CONTINUE TO GIVE INCOMPLETE ANSWERS TO THE PLAINTIFF'S QUESTIONS AS PART OF THE DISCOVERY PROCESS.

THE DEFENDANTS FAIL TO PRODUCE DOCUMENTS REQUESTED BY THE PLAINTIFF SUCH AS :

- a) DEFENDANTS 'S POSITION STATEMENT..
- b) THE DEFENDANTS FAIL TO PRODUCE " THE PLAINTIFF PERSONNEL 'S RECORD AND OTHER DOCUMENTS REQUESTED BY THE PLAINTIFF - DELAYING THE DISCOVERY PROCESS UNDER FEDERAL CIVIL RULE 37 NOTES (18) (51) (55) (56) (60).

3- THE PLAINTIFF INFORMED AND REQUESTED THE TIME OFF FOR SURGERY AND TWO PREVIOUS DOCTOR NOTICES INFORMING THE DEFENDANTS ABOUT THE PLAINTIFF IMPAIRMENTS IN HEAVY DUTIES TASKS.

4- THE PLAINTIFF WAS NOT GIVEN EQUAL PAY..

5- THE PLAINTIFF MEDICAL AND DENTAL INSURANCE WAS CANCELLED BEFORE SURGERY WITHOUT NOTICE ON JANUARY 25, 2000 .
THE FAMILY MEDICAL LEAVE ACT WAS DENIED TO THE PLAINTIFF BY THE DEFENDANTS (SODEXHO- MARRIOTT).

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6- THE PLAINTIFF WAS WRONGFULLY TERMINATED BY THE DEFENDANTS ON JANUARY 31, 2000 .

7- THE DEFENDANTS (SODEXHO-MARRIOT) FAILED TO OFFER THE PLAINTIFF SEVERANCE PACKAGE FOR THE PLAINTIFF PEACE OF MIND.

8- THE DEFENDANTS FAILS TO COMPLY WITH MASS GENERAL LAW 175 110 , 1101 CH. 1761 9 .THE FEDERAL AND STATE LAW GIVE THE FORMER EMPLOYEE THE RIGHT TO CONTINUE WITH THE HEALTH GROUP INSURANCE AFTER TERMINATION. THE DEFENDANTS 'S ACTIONS PREVENTED THE PLAINTIFF FROM GETTING BENEFITS ENTITLED TO.. MOREOVER, THE EMPLOYER MUST GIVE THE OPPORTUNITY TO THE EMPLOYEE AND DEPENDENTS TO KEEP THE MEDICAL INSURANCE AFTER TERMINATION. ON THE OTHER HAND , THE DEFENDANTS CANCELLED THE PLAINTIFF MEDICAL INSURANCE AND UNLAWFULLY GOT PAYMENT FOR MEDICAL INSURANCE THAT WAS CANCELLED BY THE DEFENDANTS MALICIOUS ACTION. THE DEFENDANTS ACTED MALICIOUSLY . THE PLAINTIFF WAS TERMINATED IN BAD FAITH.

9- THE PLAINTIFF WAS MISTREATED WITH NOT GOOD REASON . THE PLAINTIFF WAS NOT TREATED WITH RESPECT AND DIGNITY AS A HUMAN BEING BY THE DEFENDANTS (SODEXHO-MARRIOTT). THE DEFENDANTS HAVE WRONGFULLY AND MALIGNED TERMINATED THE PLAINTIFF BECAUSE THE PLAINTIFF COMPLAINED OF ILLEGAL AND UNETHICAL ACTION BY THE DEFENDANTS .

10- THE DEFENDANTS FAIL TO COMPLY WITH THE FEDERAL EMPLOYMENT AT WORK PLACE . THE CONSOLIDATE OMNIBUS BUDGET RECONCILIATION ACT OR COBRA.

LEGAL CITATION : 29 U S C 1162 THAT APPLIES FOR BUSINESS WITH 20 OR MORE EMPLOYEES AND IT HAS A DURATION OF 18 MONTHS .

11- THE PLAINTIFF WAS TERMINATED WITH BAD FAITH AND DISCRIMINATED BASED ON HER DISABILITY , NATIONAL ORIGIN , AGE, AND RETALIATE BY THE DEFENDANTS.'

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12- THE DEFENDANTS (SODEXHO-MARRIOTT) CANCELLED THE MEDICAL, DENTAL , SHORT TERM DISABILITY AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE ;THE LAST DAY THE PLAINTIFF WENT TO ^{ED} ~~TO HIS OFFICE~~ WORK BEFORE SURGERIES . IN ADDITION , THE DEFENDANTS GOT MONEY FROM THE PLAINTIFF PAYCHECKS FOR MEDICAL , DENTAL , SHORT TERM, AND ACCIDENTAL DEATH AND DISMEMBERMENT AFTER THE INSURANCE WAS UNLAWFULLY CANCELLED BY SODEXHO-MARRIOTT WITHOUT ANY NOTICE TO THE PLAINTIFF. VIOLATING THE PLAINTIFF'S CONSTITUTIONAL RIGHTS.

13- ALL ABOVE FACTS AND ELEMENTS DEFINE IN FULL DETAILS ESTABLISH A PRISMA FACIE CASE OF THE FAIR EMPLOYMENT LAW VIOLATION AND AS RESULT A PRISMA FACIE CASE OF DISCRIMINATION BASED ON DISABILITY, NATIONAL ORIGIN, AGE AND RETALIATION.. ALSO VIOLATING THE EQUAL PAY ACT, FAMILY MEDICAL LEAVE ACT , WRONGFUL TERMINATION, AND CIVIL RIGHTS VIOLATION. ALL DETAILS ABOVE MENTIONED PRODUCE A CREDIBLE DEMONSTRATIVE EVIDENCE OF DISCRIMINATION PRISMA FACIE CASE BURDEN OF PROOF UNDER MASS CHAPTER 151 B . ALL THESE FACTS BRING THIS COMPLAINT TO A CIVIL ACTION AGAINST THE DEFENDANTS (SODEXHO- MARRIOTT).

14- JUDICIAL REMEDIES ARE AVIABLE PURSUANT TO COURT ACTION UNDER MASS GEN. LAW ACT c 151B 9.

THE PLAINTIFF IS ENTITLED TO G. L. c 218 19A (a) :

1- BACK PAY.

2- FRONT PAY.

3-REMEDIES.

4- MITIGATION OF DAMAGES.

5-EMOTIONAL DISTRESS OF DAMAGES.

6-MULTIPLE DAMAGES.

7- PUNITIVE DAMAGES.

8-WORK COMPENSATION.

9-ATTORNEY FEES AND COSTS.

10-APPROPRIATE DAMAGES UNDER 42 U.S.C. 448, 460.

11-CIVIL AND REDEMPTIONS.

12- MEDICAL BILL AND HOSPITAL EXPENSES.

13-PLAINTIFF INJURIES AND THE EXTENT OF INJURIES, REASONABLE ANTICIPATED FUTURE MEDICAL AND HOSPITAL EXPENSES.

THE PLAINTIFF IS ENTITLED THE MONETARY DAMAGES AND REMEDIES AND PRE-JUDGEMENT INTEREST AND COSTS OF THIS SUIT TO BE PAID AND SATISFIED WITH INTEREST BY THE DEFENDANTS (SODEXHO-MARRIOTT) FOR VIOLATION OF THE PLAINTIFF CIVIL RIGHTS AND FAIR EMPLOYMENT LAW VIOLATION . AND CONSTITUTIONAL RIGHTS BY THE DEFENDANTS (SODEXHO-MARRIOTT.).

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THE PLAINTIFF 'S EMPLOYMENT LAWS AND CIVIL AND CONSTITUTIONAL RIGHTS WERE VIOLATED FOR THE DEFENDANTS (SODEXHO-MARRIOTT) ARE:

a) DISCRIMINATION BASED ON AMERICAN WITH DISABILITY ACT (ADA) OF 1973 AND 1990.

LEGAL CITATION:

U.S.C. 42 TITLE VII 12101-12213 AND MASS. GEN. LAW 151 B 4 (16) UNDER FEDERAL , LOCAL , EMPLOYMENT AGENCIES LABOR UNIONS AND PRIVATE EMPLOYERS.

THE ADA PROHIBITS EMPLOYERS FROM DISCRIMINATING AGAINST A PERSON WHO HAS A DISABILITY OR WHO PERCEIVED TO HAVE A DISABILITY IN ANY ASPECT OF EMPLOYMENT. THE ADA ALSO PROHIBITS EMPLOYERS FROM REFUSING TO HIRE OR TO TERMINATE AN EMPLOYEE BECAUSE OF HIS OR HER DISABILITY. THE ADA ALSO PROHIBITS HARASSMENT OF THE PEOPLE DESCRIBE WITH DISABILITY .

THE DISABILITY STATUTE HAS THREE PARTS DEFINITION:

1- PHYSICAL OR MENTAL IMPAIRMENT WITH SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES SUCH AS : CARING FOR ONE'S SELF ,PERFORMING MANUAL TASKS ,WALKING ,SEEING, HEARING, SPEAKING, BREATHING, LEARNNIG , WORKING.AND MENTAL DISORDER.

2- HAS A RECORD ON HAVING SUCH IMPAIRMENT ,PHYSIOLOGICAL DISORDER AFFECTING ONE OR MORE OF NUMBER OF BODY SYSTEM.

3- MENTAL OR PHCYOLOGICAL DISORDER . A PERSON MUST HAS AN IMPAIRMENT THAT PREVENTS OR RESTRICTS THE EMPLOYEE FROM PERFORMING MAJOR LIFE FUNCTIONS.

B) EQUAL PAY ACT (EPA)

LEGAL CITATION:

29 U.S.C. 206 (d).

UNDER FEDERAL, STATE , LOCAL, EMPLOYMENT AGENCIES AND VIRTUALLY ALL PRIVATE EMPLOYERS (REGARDLESS OF NUMBER OF EMPLOYEES).

EMPLOYERS CAN NOT PAY DIFFERENT WAGES TO MEN AND WOMEN WHO DO SUBSTANTIALLY EQUAL WORK..

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C) RETALIATION .

LEGAL CITATION :

MASS GEN. LAW 151 B 4(4), 4(4a), AND 415 627, 628.

RETALIATION IS A SEPARATE CLAIM FROM DISCRIMINATION MOTIVATED BY DISTINCT INTENT TO PUNISH OR TO RID SOMEONE WHO COMPLAIN OF UNLAWFUL PRACTICE FROM HIS OR HER WORKPLACE..

THE ADA PROHIBITS RETALIATION AGAINST PEOPLE WHO ASSERT THEIR RIGHTS UNDER ADA.

IT IS ILLEGAL TO PUNISH OR TO TAKE ANY NEGATIVE ACTION OR DECISION AGAINST AN EMPLOYEE WHO COME FORWARD WITH GOOD FAITH. THE MOST OBVIOUS FORMS OF RETALITION ARE: TERMINATION, DICIPLINE, DEMOTION, PAY CUTS AND CHANGE THE ACCUSER 'S JOB RESPONSABILITIES.

D) FAMILY MEDICAL LEAVE ACT OF MASSACHUSETTS.

LEGAL CITATION :

MASS. GEN. LAW CHAPTER 149 , 52 D ,105 D ,AND CHAPTER 151 1 (5).

EMPLOYERS COVERED : EMPLOYERS WITH 6 OR MORE EMPLOYEES MUST PROVIDE MATERNITY AND ADOPTION LEAVE.

EMPLOYERS WITH 50 OR MORE EMPLOYEES MUST OFFER LEAVE FOR SCHOOL ACTIVITIES FOR ELEGIBLE EMPLOYEES: FUL TIME , FEMALE EMPLOYEES WHO HAVE COMPLETED PROBATIONARY PIRIOD OR THREE MONTHS OF SERVICES. IF NOT SET PROBATIONARY PIRIOD , ARE ELEGIBLE FOR MATERNITY AND ADOPTION LEAVE EMPLOYEES WHO ARE ELEGIBLE UNDER (FMLA) ARE ELEGIBLE FOR ALL OTHER LEAVE MEDICAL LEAVE ACT.

E) THE FEDERAL FAIR EMPLOYMENT LAW ACT.

THE FEDERAL FAIR EMPLOYMENT LAW TITLE VII OF CIVIL RIGHTS OF 1964 (FLSA) .

LEGAL CITATION :

42 U.S.C 2000 +

UNDER FEDERAL ,STATE ,LOCAL LABOR UNIONS AND PRIVATED EMPLOYERS WITH 15 OR MORE EMPLOYEES ..

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F) AGE DISCRIMINATION (ADEA)

LEGAL CITATION:

29 U.S.C. 621-634 (c) AND MASS. GEN. LAW CHAPTER 151 B 4(17.) UNDER LOCAL ,FEDERAL ,LABOR UNIONS AND PRIVATE EMPLOYERS WITH 20 OR MORE EMPLOYEES.

THE ADEA PROHIBITS DISCRIMINATION AGAINST EMPLOYEES WHO ARE 40 OR OLDER. THE ADEA ALSO PROHIBITS HARASSMENT OF EMPLOYEES BASED ON THEIR AGE. THE ADEA PROHIBITS EMPLOYERS FROM RETALIATING AGAINST EMPLOYEES WHO ASSERT THEIR RIGHTS UNDER ADEA.~~OFFICE~~

THE FEDERAL AND STATE LAW ABSOLUTELY PROHIBITS EMPLOYERS FROM BEING HARDER ON SOME EMPLOYEE THAN OTHER BECAUSE OF RACE , RELIGION , NATIONAL ORIGIN , GENDER , AGE, DISABILITY , UNDER THE LAW THOSE CLASSES ARE PROTECTED AGAINST DISCRIMINATION . ALL EMPLOYEES ARE ENTITLED TO BE TREATED THE SAME , WITH RESPECT AND WITHOUT PREJUDICE . EACH EMPLOYEE DESERVES THAT HIS OR HER CONSTITUTIONAL RIGHTS BE QUARANTEED BY FEDERAL , STATE GOVERNMENT AND EMPLOYERS.

JULY 7, 2006

SUBMITTED BY,

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